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## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

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**Revision Type (check all that apply):**

☐ Amendment  
☒ New  
☒ Repeal

**Rule(s) Revised** (for additional chapters, copy and paste table)

Chapter Number	Chapter Title
0940-05-44	Minimum Program Requirements for Alcohol and Drug Residential Detoxification Treatment Facilities
Rule Number	Rule Title
0940-05-44-.01	Definition
0940-05-44-.02	Application of Rules
0940-05-44-.03	Policies and Procedures
0940-05-44-.04	Personnel and Staffing Requirements
0940-05-44-.05	Service Recipient Assessment Requirements
0940-05-44-.06	Individual Program Plan Requirements
0940-05-44-.07	Service Recipient Record Requirements
0940-05-44-.08	Professional Services
0940-05-44-.09	Service Recipient Medication Administration Requirements
0940-05-44-.10	Recreational Activity Provisions
0940-05-44-.11	Service Recipient Health, Hygiene, and Grooming Provisions

0940-05-44-.01 Definition.

- (1) "Alcohol and Drug Residential Detoxification Treatment Facilities" means intensive twenty-four (24) hour residential treatment for service recipients to systematically reduce or eliminate the amount of a toxic agent in the body until the signs and symptoms of withdrawal are resolved. The two levels of residential detoxification treatment are (a) clinically managed detoxification treatment and (b) medically monitored detoxification treatment. Clinically managed detoxification treatment emphasizes social and peer support and relies on established clinical protocols to determine whether service recipients need a higher level of care to manage withdrawal. Medically monitored residential detoxification treatment uses medical and nursing professionals to manage withdrawal signs and symptoms without the full resources of an acute care or psychiatric hospital. Both levels of residential detoxification services can be offered in a community setting or a specialty unit within a hospital. The American Society of Addiction Medicine Patient Placement Criteria (ASAM PPC) is used to determine the level of residential detoxification treatment that will best meet a service recipient's needs.

0940-05-44-.02 Application of Rules.

- (1) The governing body of a facility providing alcohol and drug residential detoxification treatment services must comply with the following rules:
  - (a) Applicable occupancy rules found in Chapter 0940-05-04 Life Safety Licensure Rules:
    1. Rule 0940-05-04-.02 Health Care Occupancies for facilities providing services to four (4) or more service recipients who are not capable of self-preservation; or
    2. Rule 0940-05-04-.06 Residential Occupancies – Board and Care for facilities providing services to four (4) or more service recipients who are capable of self-preservation; or
    3. Rule 0940-05-04-.07 Residential Occupancies – One- and Two-Family Dwellings (Two or Three Clients) for facilities providing services to two (2) or three (3) service recipients;
  - (b) Rule 0940-05-04-.09(2) Mobile Non-Ambulatory Rule if services are provided to one (1) or more mobile non-ambulatory service recipients in facilities meeting the requirements for Rule 0940-05-04-.06 Residential Occupancies – Board and Care or Rule 0940-05-04-.07 Residential Occupancies – One- and Two-Family Dwelling Occupancy;
  - (c) Adequacy of Facility Environment and Ancillary Services found in Chapter 0940-05-05;
  - (d) Minimum Program Requirements for All Facilities found in Chapter 0940-05-06;
  - (e) Minimum Program Requirements for Alcohol and Drug Residential Detoxification Treatment Facilities found in Chapter 0940-05-44; and
  - (f) Use of Isolation, Mechanical Restraint, and Physical Holding Restraint in Mental Health Residential Treatment Facilities found in Chapter 0940-03-09.

0940-05-44-.03 Policies and Procedures.

- (1) The facility must maintain a written policy and procedures manual which includes the following:
  - (a) Intake and assessment process;



- (b) A description of the aftercare service;
- (c) Requirements that each employee or volunteer comply with procedures for detection, prevention, and reporting of communicable diseases according to procedures of the Tennessee Department of Health;
- (d) Policies and procedures to ensure employees and volunteers practice standard precautions for infection control, as defined by the Centers for Disease Control (CDC);
- (e) A quality assurance procedure which assesses the quality of care at the facility. This procedure must ensure appropriate treatment has been delivered according to acceptable clinical practice;
- (f) Drug testing procedures if used by the facility;
- (g) Exclusion and inclusion criteria for service recipients seeking the facility's services;
- (h) Written admission protocols to screen for potentially aggressive or violent service recipients;
- (i) Policies and procedures which address the methods for managing disruptive behavior including techniques to de-escalate anger and aggression;
- (j) If restrictive procedures are used to manage disruptive behaviors, the written policies and procedures governing this use must comply with the Department of Mental Health and Developmental Disabilities rules in Chapter 0940-03-09 Use of Isolation, Mechanical Restraint, and Physical Holding Restraint in Mental Health Residential Treatment Facilities;
- (k) For facilities providing clinically managed detoxification, procedures to ensure an assessment on admission by trained staff using a physician-approved protocol to determine if detoxification can safely occur in a clinically managed setting;
- (l) For facilities providing clinically managed detoxification with self-administered detoxification medications, procedures for a physical examination by a physician, physician assistant or nurse practitioner as part of the initial assessment;
- (m) For facilities providing medically monitored detoxification, procedures to ensure an assessment by a licensed nurse using a physician-approved protocol, or a physician, physician assistant or nurse practitioner, to determine whether services can be safely provided in a medically monitored residential treatment setting;
- (n) For facilities providing medically monitored detoxification, procedures for a physical examination within twenty-four (24) hours of admission by a physician, physician assistant or nurse practitioner;
- (o) Procedures for referring service recipients whose needs cannot be met to an appropriate level of care at another facility or an acute care hospital;
- (p) Program admission criteria related to the results of the physical assessment;
- (q) Physician-approved protocols for service recipient observation, supervision, and determination of appropriate level of care;
- (r) Procedures and criteria for more extensive medical intervention and/or transfer to a more intensive service including an acute care hospital if a service recipient has, at a minimum, any of the following conditions:
  - 1. A history of severe withdrawal, multiple withdrawals, delirium tremens, or seizures;

2. Sustained extremes in heart rate;
  3. Cardiac arrhythmia; and/or
  4. Unstable medical conditions including hypertension, diabetes, or pregnancy;
- (s) Procedures to ensure that the facility, either directly or through arrangements with other public or private non-profit entities, will make available tuberculosis (TB) services in accordance with current Tennessee TB Guidelines for Alcohol and Drug Treatment Facilities (TB Guidelines), established by the Department of Health TB Elimination Program and the Department of Mental Health and Developmental Disabilities Division of Alcohol and Drug Abuse, including:
1. Counseling the service recipients about TB;
  2. Screening all service recipients for TB and, if applicable, testing service recipients at high risk for TB to determine whether the service recipients have been infected with TB; and
  3. Providing for or referring the service recipients infected by TB for appropriate medical evaluation, treatment, and case management activities;
- (t) Procedures to ensure that service recipients under age eighteen (18) will be treated separately from service recipients eighteen (18) years of age or older;
- (u) Procedures to ensure implementation of physician-approved protocols for service recipient observation and supervision and documentation of any concerns indicated by the protocol that need to be reviewed by a physician; and
- (v) A requirement that the facility provide to the service recipient, upon admission, a written statement outlining in simple, non-technical language all rights of service recipients under Title 33. These rights must include provisions to prohibit:
1. Denial to the service recipient of adequate food, treatment/rehabilitation activities, religious activities, mail or other contacts with family as punishment; and
  2. Confinement of the service recipient to his/her room or other place of isolation as punishment. This does not preclude requesting service recipients to remove themselves from potentially harmful situations in order to regain self-control.

#### 0940-05-44-.04 Personnel and Staffing Requirements.

- (1) Direct services must be provided by qualified alcohol and drug abuse personnel.
- (2) All medical staff in facilities providing medically monitored detoxification and all direct service staff in facilities providing clinically managed detoxification must receive documented training before having unsupervised direct contact with service recipients. Training topics must include implementing physician-approved protocols for the signs and symptoms of alcohol and other drug intoxication and withdrawal; monitoring withdrawal; assessing appropriate levels of care; supportive care; preparing service recipients for ongoing treatment; and facilitating entry into ongoing care.
- (3) Facilities providing clinically managed detoxification must provide annual training to all direct service staff on supervising the self-administration of medications.
- (4) The facility must employ or retain a physician with training or experience in addiction medicine by written agreement to serve as medical consultant to the program.



- (5) The facility must have a physician, physician assistant, or nurse practitioner available twenty-four (24) hours a day by telephone for medical evaluation and consultation.
- (6) The facility providing medically monitored detoxification must make available hourly or more frequent monitoring if needed by a licensed nurse.
- (7) All on-duty and on-site direct care staff must be certified in cardiopulmonary resuscitation (CPR) and trained in first aid, the abdominal thrust and standard precautions for infection control as defined by the Centers for Disease Control (CDC).
- (8) The facility must provide annual education about sexually transmitted diseases (STD), human immunodeficiency virus (HIV), and acquired immunodeficiency syndrome (AIDS) to all direct care staff.
- (9) The facility must provide direct care staff with annual training in techniques to screen for potentially aggressive or violent service recipients and training in techniques to de-escalate anger and aggression in service recipients.
- (10) The facility must maintain a direct-care awake staff to service recipient ratio on-duty and on-site of at least one (1) to twelve (12).
- (11) The facility must follow current TB Guidelines for screening and testing employees for TB infection.

0940-05-44-.05 Service Recipient Assessment Requirements.

- (1) The facility must document that the following assessments are completed at the time of admission; re-admission assessments must document the following information from the date of last service:
  - (a) Assessment of current functioning by trained staff according to presenting problem including addiction-focused history of the presenting problem;
  - (b) Assessment of any special needs such as co-occurring psychiatric and medical conditions, physical limitations, cognitive impairments, and support system issues;
  - (c) Basic medical history information and determination of the necessity of a medical evaluation and a copy, where applicable, of the results of the medical evaluation, as deemed necessary by the program physician;
  - (d) A physical examination by a physician, physician assistant or nurse practitioner: within twenty-four (24) hours of admission if a facility is providing medically monitored detoxification; or as part of the initial assessment if a facility is providing clinically managed detoxification with the self-administration of detoxification medications; and
  - (e) A history of prescribed medications, frequently used over-the-counter medications, and alcohol or other drugs, including patterns of specific usage for the past thirty (30) days prior to admission.
- (2) If the facility provides medically monitored detoxification services, then the facility must document that the following additional assessments are completed at the time of admission; re-admission assessments must document the following information from the date of last service:
  - (a) An assessment on admission by a licensed nurse;
  - (b) Appropriate laboratory and toxicology tests; and
  - (c) If the medically monitored detoxification services are step-down services from medically managed detoxification in an acute care hospital (ASAM Level IV-D), an evaluation within twenty-four (24) hours of admission by a physician of records of a physical

examination within the preceding seven (7) days.

0940-05-44-.06 Individual Program Plan Requirements.

- (1) An Individual Program Plan (IPP) developed within twenty-four (24) hours of admission must meet the following requirements and document for each service recipient:
  - (a) The service recipient's name;
  - (b) The date of the development;
  - (c) Standardized diagnostic formulation(s) including, but not limited to, the current editions of the Diagnostic and Statistical Manual (DSM) and/or the International Statistical Classification of Diseases and Related Health Problems (ICD); and the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders (ASAM PPC).
  - (d) Treatment priorities and goals with treatment objectives to, and activities designed to, meet those objectives;
  - (e) Discharge plans for making referrals to address a service recipient's goals and needs;
  - (f) Daily, seven (7) days per week, assessment of the service recipient's progress through detoxification and any treatment changes; and
  - (g) Signatures of staff involved in treatment planning and documentation of service recipients' participation in the treatment planning process.

0940-05-44-.07 Service Recipient Record Requirements.

- (1) The individual service recipient record must include the following:
  - (a) Documentation on a medications log sheet of all medications prescribed or administered including date, type, dosage, frequency, amount, and reason;
  - (b) A list of each individual article of each service recipient's personal property valued at \$100.00 or more including its disposition, if no longer in use;
  - (c) Written accounts of all monies received and disbursed on behalf of the service recipient;
  - (d) Reports of medical problems, accidents, seizures, and illnesses and treatments for such accidents, seizures, and illnesses;
  - (e) Reports of significant behavior incidents;
  - (f) Reports of any instance of physical holding, restrictive procedures, or restraint with documented justification and authorization;
  - (g) A discharge summary which states the date of discharge, status at discharge, reasons for discharge, and referrals of service recipients and their families or significant others to the appropriate treatment resource upon completion of detoxification as appropriate; and
  - (h) Documentation of a treatment protocol for detoxification and daily notes, seven (7) days per week, by qualified alcohol and drug or medical personnel that the protocol is being followed or exceptions to the protocol.

0940-05-44-.08 Professional Services.

- (1) The facility must offer daily treatment services necessary to assess needs, help the service



recipient understand addiction and support the completion of the detoxification process.

- (2) The facility must plan for discharge to address service recipient needs as indicated in the assessment/history in the following areas: vocational, educational skills and academic performance; financial issues; cognitive, socio-emotional, and psychological issues; social, family, and peer interactions; physical health; community living skills and housing information. Such services may be provided directly by the agency or indirectly by referral to other service providers. Referral agreements with frequently used providers must be documented. The provision of such services to individual service recipients must be documented in the service recipient record at the facility.
- (3) The facility must document either by written agreements or by program services access to an interdisciplinary team of appropriately trained clinicians (such as physicians, registered nurses, licensed practical nurses, counselors, social workers and psychologists) to assess, obtain, and interpret information regarding service recipient needs. The number and disciplines of team members must be appropriate to the range and severity of the service recipient's problem.
- (4) The facility must document, either by written agreements or by program services, the provision of twenty-four (24) hours per day, seven (7) days per week availability of immediate medical evaluation and care.

#### 0940-05-44-.09 Service Recipient Medication Administration Requirements.

- (1) Facilities providing medically monitored detoxification services must provide a licensed nurse to oversee medication administration twenty-four (24) hours per day.
- (2) When supervising the self-administration of medication, the facility must consider the service recipient's self-management skills and ability.
- (3) The facility must ensure that prescription medications are taken only by service recipients for whom they are prescribed and in accordance with the directions of a qualified prescriber.
- (4) Discontinued and outdated drugs and containers with worn, illegible, or missing labels must be disposed.
- (5) All medication errors, drug reactions, or suspected inappropriate medication use must be reported to the Medical Director of the facility who will report to the prescriber, if known.
- (6) Evidence of the current prescription of each medication taken by a service recipient must be maintained by the facility.
- (7) All direct service staff must be trained about medications used by the service recipient. This training must include information about the purpose and function of the medications, their major side effects and contraindications, and ways to recognize signs that medication is not being taken or is ineffective for its prescribed purposes.
- (8) Staff must have access to medications at all times.
- (9) For any service recipient incapable of self-administration, all medications must be administered by personnel licensed to administer medication.
- (10) Schedule II drugs must be stored in a locked container within a locked compartment at all times and be accessible only to staff in charge of administering medicine.
- (11) All medications and other medical preparations intended for internal or external human use must be stored in sanitary and secure medicine cabinets or drug rooms. Such cabinets or drug rooms must be kept securely locked when not in use and the key must be in the possession of the supervising nurse or other authorized staff. Locks in doors to medicine cabinets and drug rooms must be such that they require an action on the part of staff to lock and unlock.

- (12) For facilities providing clinically managed detoxification services, staff must document each time a service recipient self-administers medication or refuses a medication, including over-the-counter medication. This documentation must include the date, time, medication name, and dosage and be entered on the medication log sheet in the service recipient's record.
- (13) Before discharge, service recipients must be given instruction about dosages, appropriate use, and self-administration of medications after detoxification is complete and the service recipient leaves the residential detoxification facility.

0940-05-44-.10 Recreational Activity Provisions.

- (1) The facility must provide opportunities for recreational activities appropriate to and adapted to the needs, interests, and ages of the service recipients being served.

0940-05-44-.11 Service Recipient Health, Hygiene, and Grooming Provisions.

- (1) The facility must have provisions that address the following health issues while the service recipient is at the facility:
  - (a) Nutritional needs;
  - (b) Exercise;
  - (c) Weight control;
  - (d) Adequate, uninterrupted sleep; and
  - (e) Designated smoking areas outside the building.
- (2) The facility must assist service recipients in independent exercise of health, hygiene, and grooming practices.
- (3) The facility must encourage the use of dental appliances, eyeglasses, and hearing aids, if used by service recipients.
- (4) The facility must encourage each service recipient to maintain a well-groomed and clean appearance that is age and activity appropriate and within reason of current acceptable styles of grooming, dressing, and appearance.

Authority: T.C.A. §§ 4-4-103, 4-5-202; 4-5-204; 33-1-302, 33-1-305, 33-1-309; and 33-2-301; 33-2-302; 33-2-404; and Executive Order 44 (February 23, 2007).

Repeals

Chapter 0940-05-44 Minimum Program Requirements for Alcohol and Drug Abuse Residential Detoxification Treatment Facilities is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103; 4-5-202; 4-5-204; 33-1-302, 33-1-305, 33-1-309; and 33-2-301; 33-2-302; 33-2-404; and Executive Order Number 44 (February 23, 2007).



\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows: N/A

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Mental Health and Developmental Disabilities on 09/22/2008, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/27/2008

Notice published in the Tennessee Administrative Register on: 07/15/2008

Rulemaking Hearing(s) Conducted on: (add more  
dates. 08/14/2008



Date: 9/23/08

Signature: Virginia Trotter Betts

Name of Officer: Virginia Trotter Betts, MSN, JD, RN, FAAN

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9/23/08

Notary Public Signature: Sue B. Hunt

My commission expires on: 7/25/09

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.  
Attorney General

10-14-08

Date

**Department of State Use Only**

Filed with the Department of State on: 1/7/09  
Effective on: 3/23/09

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Riley C. Darnell  
Riley C. Darnell  
Secretary of State

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

### **TDMHDD Responses to Comments Made at Rulemaking Hearing on Chapter 0940-05-44 Minimum Program Requirements for Alcohol and Drug Residential Detoxification Treatment Facilities August 14, 2008**

**Note:** Underlined text means that text will be added. Strikethrough text means text that will be deleted.

#### **Responses to oral comments at the hearing:**

**Comment:** Sharon Trammel (Grace House, Memphis) said she ran a clinically managed detoxification treatment facility with four beds. Ms. Trammel stated that having two (2) staff members on-site and on-duty with only four (4) service recipients conflicts with the staffing ratio rules. Rule 0940-05-44-.04(7) states that facilities must provide at least two (2) on-duty and on-site staff members certified in cardiopulmonary resuscitation (CPR), and trained in first aid, the abdominal thrust and standard precautions for infection control as defined by the Centers for Disease Control (CDC). She pointed out that this requirement is inconsistent Rule 0940-05-44-.04(10) and (11). These rules call for staffing ratios of one (1) to four (4) when service recipients are not capable of self preservation and (1) to ten (10) when service recipients are capable of self preservation.

**TDMHDD Response:** TDMHDD concurs that the language relating to staff ratios is contradictory. Rule 0940-5-44-.04(7) will be changed by deleting the words "The facility must provide at least two (2) one-duty and on-site staff members" with the words "All on-duty and on-site direct care staff must be" so that the new rule will read as follows:

All on-duty and on-site direct care staff must be ~~The facility must provide at least two (2) on-duty and on-site staff members~~ certified in cardiopulmonary resuscitation (CPR) and trained in first aid, the abdominal thrust and standard precautions for infection as defined by the Centers for Disease Control (CDC).

**Comment:** Dan Hoyle (Pathfinders, Gallatin) said he runs a four (4)-bed social detoxification facility and the requirement to have two (2) on-duty staff certified in cardiopulmonary resuscitation (CPR) and trained in first aid is not practical in such small-scale facilities.

**TDMHDD Response:** See previous response about training requirements for staff.

**Comment:** Mr. Hoyle further stated that Pathfinders is accredited by the Commission on Accreditation of Rehabilitation Facilities. He requested that the TDMHDD encourage facilities to seek accreditation and that program monitoring requirements be reduced for accredited facilities.

**TDMHDD Response:** Current licensure Rule 0940-05-02-.11 Deemed Compliance allows agencies meeting achieving accreditation to be deemed in compliance with applicable licensure program requirements. Rule 0940-05-02-.11(2) states:

To be considered for deemed compliance status determination under this section, the licensee must submit written and official evidence of certification for accreditation to the Department including any cited deficiencies with plan of correction.



**Responses to oral comments received prior to the hearing from Paul Fuchcar (Council on Alcohol and Drug Services, Chattanooga) and Deanna Irick (Frontier Health, Johnson City).**

**Comment 1:** Delete the requirement in Rule 0940-05-44-.01(1) Definitions that residential detoxification treatment services be limited to service recipients at least eighteen years of age.

**TDMHDD Response:** TDMHDD agrees that detoxification services should be available to service recipients under eighteen (18) years of age, but will require that adolescent service recipients receiving detoxification services be separated from adult service recipients. A new subparagraph to Rule 0940-05-44-.03 Policies and Procedures will be drafted with the following wording:

Procedures to ensure that service recipients under age eighteen (18) will be treated separately from service recipients eighteen (18) years of age or older.

**Comment 2:** Amend Rule 0940-05-44-.03(n)(4) by diabetes and pregnancy to the list of unstable medical conditions.

**TDMHDD Response:** TDMHDD agrees. Rule 0940-05-44-.03(n) will be amended to read as follows:

Procedures and criteria for more extensive medical intervention and/or transfer to a more intensive service including an acute care hospital, must minimally include the following:

A history of severe withdrawal, multiple withdrawals, delirium tremens, or seizures;

Sustained extremes in heart rate;

Cardiac arrhythmia; and

Unstable medical conditions including Sustained extremes in blood pressure, hypertension, diabetes, or pregnancy; and

**Comment 3:** Retain the requirement in Rule 0940-05-44-.04(2) Personnel and Staffing Requirements that direct service staff receive training on detoxification services before having unsupervised contact with service recipients. Remove the requirement that training be completed within 30 days. The latter requirement could be problematic if new staff, e.g., nurses, are hired to work every other week.

**TDMHDD Comment:** TDMHDD agrees. As amended, Rule 0940-05-44-.04(2) will read as follows:

All medical staff in facilities providing medically monitored detoxification and all direct service staff in facilities providing clinically managed detoxification must receive documented training before having unsupervised direct contact with service recipients. Training topics must include within thirty (30) days of employment in implementing physician-approved protocols for the signs and symptoms of alcohol and other drug intoxication and withdrawal; monitoring withdrawal; assessing appropriate levels of care; supportive care; preparing service recipients for ongoing treatment; and facilitating entry into ongoing care. Training must be documented and completed before direct service staff may have unsupervised direct contact with service recipients.

**Comment 4:** Delete Rule 0940-05-44-.04(6) Personnel and Staffing Requirements because the wording is vague. Add a requirement that all service recipients receive a medical assessment by a nurse on admission.

**TDMHDD Response:** TDMHDD concurs. New subparagraphs will be added to Rule 0940-05-44-.03(1) Policies and Procedures worded as follows:

For facilities providing clinically managed detoxification, procedures to ensure an assessment on admission by trained staff using a physician-approved protocol to determine if detoxification can safely occur in a clinically managed setting;

For facilities providing clinically managed detoxification with self-administered detoxification medications, procedures for a physical examination by a physician, physician assistant or nurse practitioner as part of the initial assessment;

For facilities providing medically monitored detoxification, procedures to ensure an assessment by a licensed nurse using a physician-approved protocol, or a physician, physician assistant or nurse practitioner, to determine whether services can be safely provided in a medically monitored residential treatment setting;

For facilities providing medically monitored detoxification, procedures for a physical examination within twenty-four (24) hours of admission by a physician, physician assistant or nurse practitioner;

**Comment 5:** Note that the new staffing ratios proposed in Rules 0940-05-44-.04(10) and (11) differ substantially from the existing ratio of one (1) staff member to sixteen (16) service recipients. The proposed ratios are one (1) staff member to four (4) service recipients not capable of self preservation and one (1) staff to ten (10) service recipients capable of self preservation.

**TDMHDD Response:** TDMHDD concurs in part. Service recipients in residential detoxification treatment facilities need more attention than service recipients in residential rehabilitation treatment facilities. For this reason, TDMHDD will require that residential detoxification treatment facilities provide a staff-to-service recipient ratio of one (1) staff member to every twelve (12) service recipients. These staff must be awake, on-duty and on-site. The new rule will be stated as follows:

- ~~(10) For facilities serving service recipients not capable of self preservation, the facility must maintain a direct care awake staff to service recipient ratio on-duty and on-site of at least one (1) to four (4).~~
- ~~(11) For facilities serving service recipients capable of self preservation, the facility must maintain a direct care awake staff to service recipient ratio on-duty and on-site of at least one (1) to ten (10) twelve (12).~~

**Comment 6:** Since self-administration of medications does not occur in medically monitored detoxification facilities, amend Rule 0940-05-44-.05(1)(f) Service Recipient Assessment Requirements by inserting a comma after the words "medically monitored detoxification" and before the words "or clinically managed detoxification" so that as amended the rule would read:

- (f) A physical examination by a physician, physician assistant or nurse practitioner within twenty-four (24) hours of admission if a facility is providing medically monitored detoxification or, clinically managed detoxification with the self-administration of detoxification medications; and

**TDMHDD Response:** TDMHDD concurs. The rule will be re-written as suggested.

**Comment 7:** Amend Rule 0940-05-44-.05(g) Service Recipient Assessment Requirements by deleting the requirement that programs conduct a six (6) month history prior to admission of prescribed medications, frequently used over the counter medications, and alcohol or other drugs including patterns of usage for the past thirty (30) days prior to admission. Histories should include the lifetime usage with patterns of usage for the past thirty (30) days prior to admission.

**TDMHDD Response:** TDMHDD concurs. Rule 0940-05-44-.05(g) will be rewritten as follows:

A history of prescribed medications, frequently used over-the-counter medications, and alcohol or other drugs including patterns of specific usage for the past thirty (30) days prior to admission.

**Comment 8:** Amend Rule 0940-05-44-.08(g) Service Recipient Record Requirements by deleting the period and adding the words "as appropriate" after the words "referral for other services." When service recipients leave treatment before the completion of detoxification, it is not feasible to do a discharge summary with referral for other services.

**TDMHDD Response:** TDMHDD concurs. Rule 0940-5-44-.08(g) Service Recipient Record Requirements will be re-written as follows:

A discharge summary which states the date of discharge, status at discharge, reasons for discharge, and referral for other services as appropriate.



**Comment 9:** Amend Rule 0940-05-44-.10(13) by making it applicable only to clinically managed detoxification. Medical detoxification treatment facilities do not allow service recipients to self-administer medication.

**TDMHDD Response:** TDMHDD concurs. Rule 0940-05-44-.10(12) will read as follows:

For facilities providing clinically managed detoxification services, staff must document each time a service recipient self-administers medication or refuses a medication, including over-the-counter medication. This documentation must include the date, time, medication name, and dosage, and be entered on the medication log sheet in the service recipient's record.

**Written comments received from Cynthia Headrick, East Tennessee Coordinator, TDMHDD Office of Licensure.**

**Comment 1:** Amend Rule 0940-05-44-.02 (1)(a)2. Application of Rules by adding the words "who are capable of self preservation" after the words "service recipient."

**TDMHDD Response:** The rule will be amended to read as follows:

2. Rule 0940-05-44-.06 Residential Occupancies—Board and Care for facilities providing services to four (4) or more service recipients who are capable of self-preservation; or

**Comment 2:** Amend Rule 0940-05-44-.02(1)(a)3. Application of Rules to reflect the correct chapter name for Rule 0940-05-04-.07: Residential Occupancies—One- and Two-Family Dwellings (Two or Three Service Recipients) for facilities providing services to two (2) or three (3) service recipients. Amend 0940-05-44-.02(1)(b) to reflect the correct chapter name for Rule 0940-05-.04-.07: Residential Occupancies—One- and Two-Family Dwellings (Two or Three Service Recipients). In the same rule, service recipient needs an "s". Amend Rule 0940-05-44-.02(1)(c) to add the word "Chapter" before the rule number.

**TDMHDD Response:** TDMHDD concurs.

**Comment 3:** Amend Rule 0940-05-44-.07 (1)(e) by deleting the word "measurable". It goes beyond minimum rules.

**TDMHDD Response:** TDMHDD concurs. The new rules will read as follows:

- (d) Treatment priorities and goals with ~~measurable~~-treatment objectives to, and activities designed to, meet those objectives.

## Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

### Economic Impact Statement:

1. Type of small business directly affected:

Chapter 0940-5-44 Minimum Program Requirements for Alcohol and Drug Residential Detoxification Services affects facilities providing residential detoxification services licensed by the Department of Mental Health and Developmental Disabilities.

2. Projected reporting, recordkeeping, and other administrative costs:

These rules create no additional reporting or recordkeeping requirements and should not affect administrative costs.

3. Probable effect on small businesses:

These rules give licensees additional flexibility in providing residential detoxification services. By distinguishing between clinically managed and medically monitored detoxification services, facilities will be able to staff facilities in a more cost effective way.

4. Less burdensome, intrusive, or costly alternative methods:

There are no less burdensome, intrusive, or costly alternative methods.

5. Comparison with federal and state counterparts:

N/A

6. Effects of possible exemption of small businesses:

No exemption is permissible.



## Additional Information Required

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 0940-5-44-.01 Definition provides a definition of alcohol and drug residential detoxification services. In contrast to the previous definition, the new definition makes a distinction between clinically managed and medically monitored detoxification.

Rule 0940-5-44-.02 Application of Rules names other rules that apply to the licensing of residential detoxification facilities. The rule adds a requirement that residential detoxification facilities comply with Chapter 0940-3-9 Use of Isolation, Mechanical Restraint, and Physical Holding Restraint in Mental Health Residential Treatment Facilities.

Rule 0940-5-44-.03 Policies and Procedures describes written policies needed for residential detoxification services. Procedural requirements do not differ substantially from previous requirements.

Rule 0940-5-44-.04 Personnel and Staffing Requirements specifies the qualifications, training and staffing ratios for residential detoxification services. In contrast to previous rules, the proposed rules tailor staffing and training requirements to the type of detoxification services being provided, e.g. either clinically managed or medically monitored.

Rule 0940-5-44-.05 Service Recipient Assessment Requirements details the assessments that must be completed at the time of admission. Physical examination requirements differ for medically monitored and clinically managed detoxification services.

Rule 0940-5-44-.06 Individual Program Plan Requirements conforms to previous requirements but adds a requirement for standardized diagnostic formulations and patient placement criteria specified by the American Society for Addiction Medicine.

Rule 0940-5-44-.07 Service Recipient Record Requirements describes the components of a service recipient's record.

Rule 0940-5-44-.08 Professional Services in Residential Detoxification Treatment Facilities adds a requirement that the facility document access to an interdisciplinary team specific to the needs of service recipients.

Rule 0940-5-44-.09 Service Recipient Medication Administration Requirements details requirements for medication administration. These requirements do not differ substantially from previous requirements.

Rule 0940-5-44-.10 Recreational Activity Provisions and Rule 0940-5-44-.11 Service Recipient Health, Hygiene, and Grooming Provisions detail requirements for the provision of recreational activities and service recipient health, hygiene and grooming. These rules do not differ substantially from previous requirements.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 4-4-103, Regulations;

T.C.A. § 4-5-202, Hearings, when required, exceptions, publications;

T.C.A. § 4-5-204, Conduct of hearings;

T.C.A. § 33-1-302, Additional department duties;

T.C.A. § 33-1-305, Additional commissioner powers;

T.C.A. § 33-1-309, Adoption of rules;

T.C.A. § 33-2-301, Power to adopt basic quality standards for services and supports;

T.C.A. § 33-2-302, Power to regulate compliance with basic quality standards;

T.C.A. § 33-2-404, Rules for Licensure; and

Executive Order 44 (February 23, 2007), Transfer of authority for rules for alcohol and drug abuse facilities from the DOH to DMHDD.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Facilities providing residential detoxification services are most affected by these rules. The rules were reviewed and approved by The Consortium, a group comprised of the Tennessee Association of Mental Health Organizations, the Council for Alcohol and Drug Services, and the Tennessee Association of Alcohol, Drug and Other Addiction Services.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The DMHDD Office of Legal Counsel is not aware of any opinions or rulings, which directly relates to the rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no increase or decrease in state and local revenues and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Cynthia C. Tyler, Director, Office of Legal Counsel, Department of Mental Health and Developmental Disabilities, 425 5th Avenue North, Nashville, Tennessee, 37243, 253-6520.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Cynthia C. Tyler, Director of Office of Legal Counsel, Department of Mental Health and Developmental Disabilities, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee, 37243, (615) 532-6520.

- (H) Any additional information relevant to the rule proposed for continuation that the committee requests.

None